

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 MICHAEL JACOBS,

4 Plaintiff

5 v.

6 GEICO GENERAL INSURANCE
7 COMPANY,

8 Defendant

Case No.: 2:19-cv-01934-APG-EJY

**Order (1) Granting Motion to Dismiss,
(2) Denying Motion to Bifurcate, and
(3) Granting Leave to Amend**

[ECF Nos. 6, 7]

9 Plaintiff Michael Jacobs sues his insurer, defendant GEICO General Insurance Company,
10 following a car accident in which he was injured. Jacobs alleges that the at-fault driver's
11 \$15,000 insurance policy was insufficient to cover his injuries, so he submitted a claim with
12 GEICO for underinsured motorist (UIM) coverage. ECF No. 1-1 at 4-5. Jacobs alleges that he
13 provided GEICO with medical records and bills showing past and future medical expenses of
14 \$109,282.96 to \$168,282.96. *Id.* at 5-6. Jacobs submitted to an independent medical exam and
15 otherwise cooperated with GEICO, but GEICO did not tender the policy limits of \$100,000. *Id.*
16 at 6. Instead, GEICO offered \$28,782.96 to settle the UIM claim. *Id.* Based on these allegations,
17 Jacobs asserts claims for breach of contract, breach of the implied covenant of good faith and fair
18 dealing, and unfair claims handling practices.

19 GEICO moves to dismiss, arguing that the facts alleged in the complaint show only a
20 dispute as to the value of Jacobs' UIM claim and do not plausibly allege either bad faith or unfair
21 practices. GEICO also moves to dismiss Jacobs' bad faith claim as premature until the breach of
22 contract claim is resolved. Alternatively, GEICO moves to bifurcate and stay discovery and trial
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1 on the claims for bad faith and claims handling practices until after the breach of contract dispute
2 is resolved.

3 Jacobs responds by arguing that he has adequately alleged that he was injured, that he
4 made a demand that exceeded his policy limits, and that GEICO failed to make a reasonable
5 offer in bad faith. He also argues that if he has not adequately alleged his claims, he should be
6 granted leave to amend. Finally, Jacobs argues his bad faith claim is not premature and should
7 not be bifurcated because it is intertwined with his breach of contract claim.

8 I grant GEICO's motion to dismiss, with leave to amend. I deny GEICO's motion to
9 bifurcate and stay.

10 **I. ANALYSIS**

11 In considering a motion to dismiss, "all well-pleaded allegations of material fact are taken
12 as true and construed in a light most favorable to the non-moving party." *Wyer Summit P'ship v.*
13 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, I do not assume the truth
14 of legal conclusions merely because they are cast in the form of factual allegations. *See Clegg v.*
15 *Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). A plaintiff must make sufficient
16 factual allegations to establish a plausible entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550
17 U.S. 544, 556 (2007). Such allegations must amount to "more than labels and conclusions, [or] a
18 formulaic recitation of the elements of a cause of action." *Id.* at 555.

19 **A. Bad Faith**

20 Under Nevada law, an insurer breaches the duty of good faith when it refuses "without
21 proper cause to compensate its insured for a loss covered by the policy." *U.S. Fid. & Guar. Co.*
22 *v. Peterson*, 540 P.2d 1070, 1071 (Nev. 1975). An insurer is without proper cause to deny a
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1 claim when it has an “actual or implied awareness” that no reasonable basis exists to deny the
2 claim. *Am. Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 729 P.2d 1352, 1354 (Nev. 1986).
3 An unreasonable delay in payment can also constitute bad faith. *Guar. Nat. Ins. Co. v. Potter*,
4 912 P.2d 267, 272 (Nev. 1996) (“[T]his court has addressed an insurer’s breach of the implied
5 covenant of good faith and fair dealing as the unreasonable denial or delay of payment of a valid
6 claim”). However, an “insurer does not act in bad faith merely because it disagrees with the
7 claimant’s estimation of his injuries or delays paying out benefits until it receives relevant
8 documents or expert opinions.” *Igartua v. Mid-Century Ins. Co.*, 262 F. Supp. 3d 1050, 1055 (D.
9 Nev. 2017) (holding that the insurer acted reasonably in handling an insured’s claim, despite
10 delaying payment several years, because there was a reasonable dispute about the extent of the
11 insured’s injuries and whether those injuries were caused by the accident).

12 GEICO argues that Jacobs’ bad faith claim is premature because his breach of contract
13 claim must be resolved first. But a plaintiff does not need to establish success on a contractual
14 claim before proceeding with a bad faith claim. *Aiello v. Geico Gen. Ins. Co.*, 379 F. Supp. 3d
15 1123, 1129 (D. Nev. 2019). To find otherwise would require a plaintiff to commence two
16 separate lawsuits even if the facts establish that the insurer “breached the insurance contract and
17 acted in bad faith within the same factual sequence.” *Drennan v. Maryland Cas. Co.*, 366 F.
18 Supp. 2d 1002, 1007 (D. Nev. 2005). I therefore deny GEICO’s motion to dismiss on this basis.

19 However, I grant GEICO’s motion to dismiss for failure to state a claim. Jacobs’
20 complaint lacks factual allegations plausibly showing that GEICO made its settlement offer with
21 an actual or implied awareness that there was no reasonable basis supporting its decision. I
22 therefore dismiss this claim but grant leave to amend because it is not clear that amendment
23 would be futile. *Sonoma Cty. Ass’n of Retired Emps. v. Sonoma Cty.*, 708 F.3d 1109, 1118 (9th

1 Cir. 2013) (“As a general rule, [d]ismissal without leave to amend is improper unless it is clear
2 . . . that the complaint could not be saved by any amendment.”) (quotation omitted).

3 **B. Unfair Practices**

4 Under Nevada Revised Statutes § 686A.310, an insurer is liable for damages if it engages
5 in any of the various enumerated acts. In his complaint, Jacobs merely lists various subsections
6 of the statute and quotes the statutory language. He fails to allege facts plausibly showing a
7 violation. I therefore dismiss this claim, with leave to amend.

8 **C. Bifurcate or Stay**

9 Federal Rule of Civil Procedure 42(b) authorizes courts to order a separate trial of any
10 claim when separation is in the interest of judicial economy, will further the parties’
11 convenience, or will prevent undue prejudice. Fed. R. Civ. P. 42(b). The decision to bifurcate is
12 within the court’s discretion. *Hirst v. Gertzen*, 676 F.2d 1252, 1261 (9th Cir. 1982). Bifurcation
13 is particularly appropriate when resolution of a single claim or issue could be dispositive of the
14 entire case. *Drennan*, 366 F. Supp. 2d at 1007. “However, bifurcation of the trial does not
15 necessarily require bifurcation of discovery.” *Id.*

16 There is no reason to bifurcate or stay Jacobs’ bad faith claim at this stage. I cannot
17 evaluate bifurcation without a better understanding of the factual predicate for Jacobs’ bad faith
18 claim following amendment. That being said, I have regularly denied early motions to bifurcate
19 in similar cases. *See, e.g., Aiello*, 379 F. Supp. 3d at 1129; *Rosas v. GEICO Cas. Co.*, 365 F.
20 Supp. 3d 1123, 1128 (D. Nev. 2019). If Jacobs is able to allege facts supporting a bad faith
21 claim, it is likely his contractual and extra-contractual claims will be intertwined such that
22 bifurcation, at least at the early stages of the case, would not be appropriate. I therefore deny
23 GEICO’s motion to bifurcate and stay.

1 **II. CONCLUSION**

2 I THEREFORE ORDER that defendant GEICO Casualty Company's motion to dismiss
3 **(ECF No. 6) is GRANTED.** Plaintiff Michael Jacobs' claims for bad faith and unfair claims
4 handling practices are dismissed without prejudice. Jacobs may file an amended complaint by
5 September 30, 2020.

6 I FURTHER ORDER that defendant GEICO Casualty Company's motion to bifurcate
7 and stay **(ECF No. 7) is DENIED.**

8 DATED this 3rd day of September, 2020.

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11 ANDREW P. GORDON
12 UNITED STATES DISTRICT JUDGE
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